

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

EVERYTOWN FOR GUN SAFETY ACTION FUND, INC.,	:	Civil Action No. 1:21-cv-8704
Plaintiff,	:	DECLARATION OF MATTHEW MCTIGHE IN SUPPORT OF PLAINTIFF'S APPLICATION FOR ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION, EXPEDITED DISCOVERY, AND ALTERNATIVE SERVICE
v.	:	
DEFCAD, INC.; ODYSEE USER XYEEZYSZN; DEFCAD USER XYEEZYSZN; ODYSEE USER THEGATALOG-PRINTABLEMAGAZINES; THE GATALOG; DEFCAD USER FREEMAN1337; TWITTER USER XYEEZYSZN; PHILLIP ROYSTER	:	
Defendants.	:	

I, Matthew McTighe, declare as follows¹:

1. I am over eighteen (18) years old and I am competent to testify to the facts in this Declaration based on my personal knowledge.
2. I am the Chief Operating Officer and Executive Vice President for Plaintiff Everytown for Gun Safety Action Fund, Inc. ("Everytown") and in this capacity I am responsible for, among other things, developing and protecting the Everytown brand and overseeing the quality of the services and goods relating thereto. I have been the COO of Everytown since 2017.
3. I submit this declaration in support of Everytown's Application to show: (1) the Everytown Marks and brand are strong, distinctive and have tremendous and valuable goodwill;

¹ All undefined terms herein are defined as in Plaintiff's Complaint.

and (2) Everytown is suffering and will continue to suffer irreparable harm absent an immediate injunction.

Everytown's Non-Profit Work, Valuable Goodwill and Reputation

4. Everytown was formed in 2013 when the advocacy groups "Mayors Against Illegal Guns" and "Moms Demand Action" merged to tackle the shared goal of ending gun violence in America.

5. Since 2014, Everytown has become the largest gun violence prevention organization in the United States. Everytown has actively participated in research, policy, advocacy, and grassroots organizing to grow its reach to over six million supporters.

6. Everytown is (and has been) a strong advocate for the prevention of gun violence, gun trafficking, and illegal gun possession.

7. Everytown's advocacy efforts include, but are not limited to, promoting public awareness, working with federal, state, and local legislatures, conducting educational seminars, procuring funds, providing text message alerts in the field of prevention of gun violence, gun trafficking, and illegal gun possession, providing legal expertise, and producing downloadable reports and publications in the field of gun safety.

8. Everytown's work includes the Everytown Survivor Network, which is a nationwide community of gun violence survivors working together to end gun violence that is sponsored by Everytown's affiliate, the Everytown for Gun Safety Support Fund ("Everytown Support Fund").

9. The Everytown Survivor Network connects survivors to each other, amplifies the power of survivor voices, offers trauma-informed programs, provides information on direct services, and supports survivors who choose to become advocates.

10. Everytown has a nationwide presence and advocates for gun safety measures across all 50 states and the District of Columbia, including supporting prohibitions on assault weapons, high capacity magazines, and ghost guns.

11. As part of Everytown's non-profit and advocacy work, Everytown and its affiliates Everytown Support Fund and Everytown for Gun Safety Victory Fund operate the websites, www.everytown.org, www.momsdemandaction.org, www.everytownsupportfund.org, www.everytownresearch.org, www.everytownlaw.org, www.momentsthatssurvive.org, www.studentsdemandaction.org, and www.gunsensevoter.org ("Everytown Websites"), from which they educate and engage with the public and consumers, provide Everytown-branded content, and offer Everytown goods and services.

12. Everytown and its affiliates use the Everytown Marks in connection with the Websites. Printouts of pages from the Websites are attached to the complaint as **Exhibit 2**.

13. Everytown is not anti-gun, but instead pro-gun safety, and advocates nationwide gun safety through evidence-based solutions. In that regard, Everytown seeks to demand action from elected officials, change how America thinks about gun violence, and ultimately end gun violence. Everytown Support Fund also provides education and awareness about child gun deaths and responsible gun storage through the Be SMART program.

14. In connection with Everytown's research, policy know-how, and support, the U.S. House of Representatives passed the Violence Against Women Reauthorization Act (H.R. 1585); the Enhanced Background Checks Act (H.R. 1112), and the Bipartisan Background Checks Act (H.R. 8) among other legislation that supports gun safety measures.

15. In addition to Everytown's efforts on the federal level, Everytown has also been involved with efforts to prevent gun violence, gun trafficking, and illegal gun possession in state legislatures throughout the country.

16. Due to the success of its efforts, and nationwide reach, Everytown has more than six million supporters consisting of mayors, teachers, survivors, gun owners, students, and everyday Americans.

The Everytown Marks

17. In connection with Everytown's non-profit and advocacy work it maintains multiple federally registered trademarks with the United States Patent & Trademark Office ("USPTO"), provided in complaint **Exhibit 3**.

18. The Everytown Marks and associated common law rights have been used continuously and exclusively by Everytown in connection with advocacy and education efforts including, but not limited to, promoting public awareness, working with federal, state, and local legislatures, conducting educational seminars, procuring funds, providing text message alerts in the field of prevention of gun violence, providing legal expertise, and producing downloadable reports and publications in the field of gun safety.

19. In addition, Everytown sells a range of Everytown-branded merchandise on its website, including clothing, mugs, water bottles, tote bags, hats and other items that bear the Everytown Marks.

20. Much of Everytown's advocacy is carried out with volunteers wearing Everytown-branded t-shirts, which typically feature the Everytown marks. In fact, Moms Demand Action volunteers wearing their signature Moms Demand Action red t-shirts have become a well-recognized presence at political and legislative gatherings across the country.

21. Because of Everytown's success and its extensive use of the Everytown Marks, Everytown has developed substantial goodwill and a strong reputation as a staunch advocate for prevention of gun violence and promotion of gun safety measures.

22. Everytown is known nationwide as the exclusive source of goods and services under the Everytown Marks, and United States consumers have come to associate the Everytown Marks with Everytown and its non-profit educational and advocacy activities.

The Strength of the Everytown Marks

23. Everytown has taken significant steps to ensure that Everytown's non-profit goods, services, and advocacy in connection with the Everytown Marks are well-known to the public throughout the United States.

24. Since 2014, Everytown and its affiliates have spent tens of millions of dollars building the Everytown brand and advertising the Everytown Marks.

25. Everytown has over six million supporters nationwide including mayors, teachers, survivors, gun owners, students, and everyday Americans.

26. Since 2017, Everytown and its affiliates estimate they have organized and held over 27,000 rallies, marches, and public events furthering their mission to end gun violence nationwide.

27. Among other rallies, marches, and public events, Everytown organized the Everytown for Gun Safety Action Fund Presidential Gun Sense Membership Forum in 2019 to discuss gun safety and plans to keep Americans safe from gun violence ("Forum").

28. The marketing and advertising materials in connection with the Forum featured and depicted the Everytown Marks as demonstrated below:



29. The Forum featured and was attended by sixteen Democratic presidential candidates, including but not limited to, now President Joseph Biden, now Vice President Kamala Harris, Mayor Pete Buttigieg, Mayor Bill de Blasio, Senator Amy Klobuchar, Senator Bernie Sanders, Senator Elizabeth Warren, and New York Mayoral Candidate Andrew Yang.

30. Additionally, as part of its 2019 Weekend of Action (“Weekend of Action”), Everytown and its affiliates hosted more than 100 rallies across all 50 states and the District of Columbia, with thousands of attendees, over a single weekend.

31. More than 30 members of the United States Congress attended the Weekend of Action, and it was tweeted about over 45,000 times. During the Weekend of Action thousands of volunteers carried signs and wore apparel featuring the Everytown Marks. An example of volunteers at a Weekend of Action event is depicted below:



32. In addition in 2020, Everytown hosted Demanding Women: Quarantine Conversations about Gun Violence, a series of virtual conversations between Moms Demand Action founder Shannon Watts and several prominent women, including Stacey Abrams, Senator Elizabeth Warren, Senator Amy Klobuchar, then Senator Kamala Harris, New Mexico Governor Michelle Lujan Grisham, Congresswoman Val Demings, Former U.S. National Security Advisor Susan Rice, Congresswoman Karen Bass, Atlanta Mayor Keisha Lance Bottoms, Senator Tammy Duckworth, Senator Tammy Baldwin, and Michigan Governor Gretchen Whitmer (“Demanding Women”). Demanding Women broadcasts received 881,000 views, with shorter video clips from the broadcasts receiving an additional 790,000 views, for a total of 1.67 million organic views of the Demanding Women video content. The Everytown Marks were highlighted during the broadcasts.

33. Everytown's efforts have been successful culminating in millions of Everytown supporters, a strong social media presence, high website traffic, and substantial media coverage.

34. The Everytown Websites also receive a significant number of visits. In 2020 alone, the Websites' pages were visited over a total of 7.3 million times. The Websites all feature at least one of the Everytown Marks.

35. Everytown also has a significant social media following. Everytown's social media accounts bearing the "Everytown" and "Everytown for Gun Safety" Marks have over 1.4 million followers on Facebook, over 818,000 followers on Instagram, and over 258,000 followers on Twitter. Everytown's social media features the marks in connection with the usernames, the profile images, and postings associated with the accounts.

36. Additionally, the social media accounts bearing the Moms Demand Action Mark have over 716,000 followers on Facebook, over 225,000 followers on Instagram, and over 311,000 followers on Twitter. The social media accounts bearing the Moms Demand Action Mark feature the marks in connection with the usernames, the profile images, and postings associated with the accounts.

37. Everytown and the Everytown Marks have received nationwide recognition in the field of gun violence prevention.

38. Everytown is frequently asked for comment and receives media coverage in news articles regarding hot topic gun issues; a collection of some of Everytown's most notable recognition is attached to Everytown's Complaint within **Exhibit 4**. As demonstrated in Complaint Exhibit 4, Everytown and the Everytown Marks have been written about and/or depicted, in the *New York Times*, *The Hill*, *CBS Baltimore*, *CBS Iowa*, the *Associated Press*, *Billboard*, *AdWeek*, *The Baltimore Sun*, *People*, *The Wall Street Journal* and *TAP into Paterson*, among many other publications.

39. As a result of its efforts, strong brand, and the strength of the Everytown Marks, Everytown has raised significant funding for its initiatives.

40. Since 2014, Everytown and its affiliates have raised hundreds of millions of dollars.

Ghost Guns and Defendants' Infringement

41. "Ghost guns" are homemade firearms that are assembled from easy-to-obtain building blocks that can be purchased without a background check or any restriction.

42. Ghost guns are made by individuals and not federally licensed manufacturers or importers, and ghost guns do not have serial numbers.

43. Ghost guns are virtually untraceable and are a growing gun safety problem facing the United States.

44. One way that ghost guns are created is through 3-D printing, a manufacturing process that creates a physical object from instructions contained in a digital design file.

45. Once provided with instructions, the 3-D printer follows them to lay down thin layers of material in the form of liquid or powdered plastic, metal, or cement, and then fuses the layers together to create tangible, oftentimes functional, physical objects for any use or purpose. 3-D printed firearms can be assembled from a combination of such parts.

46. Instructions for 3-D printing can be found on the Internet on various websites.

47. Recently, Everytown discovered that Defendants are actively engaged in unlawfully distributing downloadable files for the manufacture of actual 3-D printed gun parts and accessories, where the files and/or the resulting gun parts and accessories bear identical versions of the Everytown Marks ("Infringing Products").

48. The Defendants' unauthorized use of the Everytown Marks in connection with the Infringing Products such as parts and accessories for assault weapons, high capacity magazines, and ghost guns is contrary to the Everytown core mission and is immediately harmful to Everytown's reputation and the Everytown Marks.

Defendants' Conduct is Irreparably Harming Everytown

49. Defendants' use of Everytown's Marks, as described in the papers being filed herewith, is depriving Everytown of the absolute right to control the quality of its non-profit goods, services, and branded advocacy offered and pursued under the Everytown Marks.

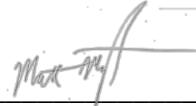
50. Defendants' conduct jeopardizes the enormous goodwill and supporter trust associated with the Everytown Marks, which Everytown has built up over years through its painstaking advocacy efforts.

51. Exacerbating the risk of injury to Everytown is the fact that Defendants' infringing 3-D printing instructions, and their resulting gun parts and accessories bear identical reproductions of the Everytown Marks in their entirety without additional phrases, logos, or commentary.

52. The fact that Defendants have used the Everytown Marks in connection with the type of firearms and firearm accessories – including assault weapons, high capacity magazines, and ghost guns – that Everytown actively works to have regulated and prohibited through legislative and other advocacy is also irreparably harmful to Everytown and the Everytown Marks as it is contrary to Everytown's core mission and linked to unlawful activities.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge.

Dated: October 22, 2021



MATTHEW MCTIGHE